**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL WRIT PETITION NO. 1176 OF 2007**

Prashant R. Kushe ..Petitioner

versus

State of Maharashtra & Anr. ..Respondents

Shri M. C. Chavan i/b. Shri M. A. Saiyed for the Petitioner.

Mrs. A. S. Pai, APP for the Respondents - State.

**CORAM : R.M.S. KHANDEPARKAR &**
**SMT. V.K. TAHILRAMANI, JJ.**

**DATE : 12TH JULY, 2007.**

**P.C.**

1. Heard.

2. The petitioner challenges the FIR dated 29.8.2006 lodged wit CBI-EOW, Mumbai. It is sought to be contended on behalf of the petitioner that it is a civil dispute between the parties and merely as a pressure tactics, the complainant has filed the complaint which has been registered as FIR.

3. The FIR apparently discloses that certain

properties were mortgaged with the bank while obtaining the loan. The loan liability is yet to be cleared and inspite of that the property mortgaged with the bank has been put in jeopardy. Relevant portion of the FIR, reads thus :

> As per terms of sanction, it had been conveyed to the company that in the event of collateral property being developed for selling to third parties, a tripartite agreement has to be entered into between the buyer, the bank and the developer. However, Shri Ramkrishna B. Kushe in criminal conspiracy with his sons namely S/Shri Nitin R. Kushe, Prashant R. Kushe and Nandkumar R. Kushe with an intention to cheat the bank transferred his ownership rights to M/s. Ramkrishna Enterprises, the developers, without knowledge of the Bank. M/s. Ramkrishna Enterprises constructed a seven storeyed building named as Palkar House on it which is comprising of 37 flats and allotted 14 flats to the tenants, 9 flats to Kushe's and retained the remaining flats with them. Thus Shri Ramkrishna B. Kushe cheated the Bank by putting Bank's funds at jeopardy.
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> In order to recover its dues from the borrower company, the bank has got conducted investigations about the aforesaid property pledged as collateral security to it for obtaining various credits to it. Inquiries have revealed that Shri Prashant Kushe and Nitin Kushe have also availed housing loans from Indian Bank, Dadar Branch to the tune of about Rs.20.00 lacs each on flat No.103, 104, 404-A, 404-B, 603, 604, 605-A, 605-B and 705 in the said Palkar House. These housing loans are also stated to be unpaid. It has been further learnt that flat No. 105 and 204 of Palkar House have also been mortgaged to United Western Bank Ltd., Vile Parle (E) Branch for availing loan for M/s.

> Majestic Merchant Import & Export Pvt. Ltd., a associate concern of M/s. Majestic Impex Pvt. Ltd. These flats are in the names of Shri Nitin Kushe and Prashant Kushe respectively.
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> Because of the above acts of fraudulent nature on the part of Directors of the Company namely Shri Nitin R. Kushe, Prashant R. Kushe and Nandkumar R. Kushe and Shri Ramkrishna B. Kushe, the Bank has been cheated to the tune of Rs.426.75 lacs apart from the Indian Bank, Dadar Branch which has also been cheated for obtaining fraudulent housing loans, it is requested that a case may be registered against aforesaid persons and be investigated for further necessary action in the matter."

4. The above quoted portion of the FIR, apparently discloses cognizable offence which is necessary for recording FIR for the Police Authorities and to conduct the investigation. Same does not disclose that it is a matter of civil nature. It apparently discloses fraud being played upon the bank. It prima facie disclosed that the fraud is played on bank. Being so, no case for the interference in the FIR nor a case for quashing the same, considering the law laid down in Bhajanlal’s case. Hence, petition is dismissed.

**(R.M.S. KHANDEPARKAR, J.)**

**(SMT. V.K. TAHILRAMANI, J.)**